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18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF NEVADA**

20 ON DEMAND DIRECT RESPONSE, LLC
21 AND ON DEMAND DIRECT RESPONSE
22 III, LLC,

23 Plaintiffs,

24 v.

25 SHANA LEE MCCART-POLLAK D/B/A
26 LOL BUDDIES ENTERPRISES,

27 Defendant.
28

Case No.

COMPLAINT

(JURY DEMAND)

1 For its Complaint, Plaintiffs, On Demand Direct Response, LLC and On Demand Direct
2 Response III, LLC (collectively, "On Demand"), hereby allege as follows:

3 **INTRODUCTION**

4 On Demand is a leading direct response marketing company which has developed creative
5 and marketing relationships that enhance the opportunity for mass-market retail exploitation. The
6 company has a carefully planned suite of market-ready products, including the product known as
7 "Cloud Pets" formerly known as the Telegram Teddy and then the Toy-Fi Teddy ("CloudPets
8 Product"). The CloudPets Product line consists of stuffed animals capable of sending and
9 receiving messages with distant users. On Demand owns U.S. Trademark Registration No.
10 4749266 for the mark CLOUDPETS (the "CloudPets Mark").

11 On August 3, 2015, Defendant Shana Lee McCart-Pollak d/b/a LOL Buddies Enterprises
12 ("Defendant" or "Ms. McCart-Pollak") began a coordinated web and social media-based assault
13 on the CloudPets Mark, the CloudPets Product, and the reputation and goodwill accumulated by
14 On Demand. Defendant's smear campaign includes false advertisements and false commercial
15 statements alleging that Defendant has intellectual property rights in her "Lots of Love Buddies"
16 idea and that On Demand had somehow colluded with a third party named Kevin Harrington
17 ("Mr. Harrington"), who Ms. McCart-Pollak claims she told about her Lots of Love Buddies
18 product idea at the Toy & Game Conference in Chicago on November 15-17, 2012, and had
19 "stolen" her Lots of Love Buddies product idea to make use and profit from her idea.

20 The public statements that Ms. McCart-Pollak has been spreading across the Internet are
21 literally false and/or misleading. The CloudPets Product was developed and introduced to the
22 public prior to November 2012 by On Demand's licensor, Spiral Toys Inc. ("Spiral Toys").
23 Development began in 2011, and by early 2012, Spiral Toys had a fully working pre-production
24 unit. On January 12, 2015, On Demand sublicensed its rights in the CloudPets Product to Jay
25 Franco & Sons, Inc. d/b/a Jay At Play ("Jay At Play").

26 Ms. McCart-Pollak's allegations and actions stating or suggesting that Mr. Harrington,
27 Spiral Toys, On Demand, and/or Jay At Play wrongfully took her ideas and/or products are
28 damaging the goodwill and reputation of On Demand, the CloudPets Mark, and the CloudPets

1 Product. Accordingly, On Demand now seeks declaratory and injunctive relief and damages for
2 acts of false advertising, defamation, commercial disparagement, intentional interference with
3 existing and prospective business relationships, and violations of N.R.S. § 598.0915 by the
4 Defendants in violation of the laws of the United States and the State of Nevada.

5 **THE PARTIES**

6 1. Plaintiff On Demand Direct Response LLC is a limited liability company organized
7 and existing under the laws of the Delaware, having a principal place of business at 14958 Ventura
8 Boulevard, Suite 104, Sherman Oaks, California 91403.

9 2. Plaintiff On Demand Direct Response III, LLC, is a limited liability company
10 organized and existing under the laws of the Delaware, having a principal place of business at
11 14958 Ventura Boulevard, Suite 104, Sherman Oaks, California 91403.

12 3. On information and belief, Defendant Shana Lee McCart-Pollak d/b/a LOL
13 Buddies Enterprises is an individual residing at 224 Via Mezza Luna Court, Henderson, Nevada
14 89011.

15 **JURISDICTION AND VENUE**

16 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§
17 1331 because the action arises under the Lanham Act, 15 U.S.C. § 1501, *et seq.*, pursuant to 28
18 U.S.C. § 1332, because the matter in controversy exceeds \$75,000, exclusive of interest and costs,
19 and is between citizens of different states, and pursuant to 28 U.S.C. §§ 2201 and 2202 for
20 declaratory relief.

21 5. This Court has jurisdiction over the state law and common law claims under the
22 doctrine of pendant jurisdiction. The state and common law claims arise from or are substantially
23 related to the same acts giving rise to the federal claims.

24 6. This Court has personal jurisdiction over Ms. McCart-Pollak, because, upon
25 information and belief, Ms. McCart-Pollak resides in and/or does business in this judicial district
26 and/or has committed acts within this judicial district giving rise to this action.

27 7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c).
28

FACTUAL BACKGROUND

On Demand and the CloudPets Product

8. On Demand is a direct response marketing company with multi-channel capabilities (i.e., retail, home shopping, web, social media, catalogue, and global distribution), with a focus on licensing existing products for infomercial production and television launch internationally.

9. On Demand has a selected series of unique products that cater to the mass-market consumer including the CloudPets Product.

10. On Demand's line of CloudPets products consists of web-enabled stuffed animals developed by Mark D. Meyers, the CEO of On Demand's licensor, Spiral Toys Inc. ("Spiral Toys") in September of 2011.

11. Spiral Toys first introduced what was then known as the Telegram Teddy (a predecessor to the current CloudPets line) at the New York Toy Fair in February 13th, 2012.

12. On the basis of that showing, Spiral Toys won an award from Parenting Magazine for the Telegram Teddy for one of the best new toys in February 2012. A true and correct copy of the Parenting Magazine feature of the Telegram Teddy is attached hereto as Exhibit A.

13. After the successful showing at the New York Toy Fair, Spiral spent March through September 2012 negotiating with four toy companies—Cloud-B, Build-a-Bear Workshop, Dragon-I Toys and Toys R Us—to find a partner to help bring its toy to market.

14. Spiral Toys signed an agreement with Dragon-I Toys Ltd. ("Dragon-I Toys") and renamed the product Toy-Fi Teddy.

15. The Toy-Fi Teddy was shown at a number of trade shows over the years, including the Dallas Toy Fair in October 2012.

16. The Toy-Fi Teddy started shipping in April of 2014 and was in stores across the United Kingdom and Australia in May 2014, and was launched in Canada and Japan by Toys-R-Us in September 2014.

17. In February of 2014, Dragon-I Toys introduced Spiral to On Demand as a potential partner for the North American launch of the Toy-Fi Teddy product.

18. Prior to launching in the United States, the product was rebranded as "CloudPets."

19. On May 12, 2014, On Demand licensed all rights to the product known as the CloudPets Product formerly known as the Telegram Teddy and then the Toy-Fi Teddy from Spiral Toys and Dragon-I Toys (collectively, "Licensor").

20. On Demand owns U.S. Trademark Registration No. 4749266 for the mark CLOUDPETS, filed on March 24, 2014, and registered on June 2, 2015, covering "Stuffed and plush dolls and toys; stuffed and plush toy animals; Electronic novelty toys, namely, toys that electronically record, play back, and distort or manipulate voices and sounds; electronic stuffed and plush dolls, animals and toys" in Class 28. A true and correct copy of the printout from the United States Patent and Trademark Office's ("USPTO") Trademark Status & Document Retrieval ("TSDR") database for U.S. Trademark Registration No. 4749266 is attached hereto as Exhibit B.

21. In June 2014, On Demand ran its first direct response campaign on television in the United States.

22. On January 12, 2015, On Demand sublicensed its rights in the CloudPets Product to Jay At Play.

23. On Demand, Spiral Toys, and Jay At Play have been and are currently in the process of initiating a multi-million unit retail launch of the CloudPets Product at retailers including, but not limited to, Wal-Mart, and are in the process of and intend to place the CloudPets Product onto store shelves in time for the 2015 holiday shopping season.

Defendant's False and Disparaging Statements Concerning On Demand, the CloudPets Mark, and the CloudPets Product

24. On December 4, 2014, Ms. McCart-Pollak sent On Demand a letter claiming that On Demand is making use and profiting from her intellectual property known as "Lots of Love Buddies" ("Demand Letter"). A true and correct copy of the Demand Letter dated December 4, 2014 is attached hereto as Exhibit C.

1 25. While Ms. McCart-Pollak alleged violations of her intellectual property rights in
2 her letter, she did not provide any valid trademark registration numbers, patent numbers, and/or
3 any documents to support her alleged rights.

4 26. Instead, Ms. McCart-Pollak alleged that On Demand colluded with “As Seen on
5 TV” after she allegedly communicated with Mr. Harrington about her Lots of Love Buddies idea
6 at the Toy & Game Conference in Chicago on November 15-17, 2012.

7 27. The Demand Letter further stated that On Demand’s “collusion with As Seen on
8 TV and its affiliates in producing, using, marketing, and/or selling the [CloudPets Product]
9 unlicensed product is unlawful and actionable.”

10 28. Specifically, Ms. McCart-Pollak alleged On Demand would be liable under the
11 Nevada state law claims of civil conspiracy, concert of action, fraud, misappropriation of trade
12 secrets, and unjust enrichment.

13 29. On January 12, 2015, the undersigned counsel responded to Ms. McCart-Pollak’s
14 Demand Letter stating that her allegations were false, wholly without merit and unsubstantiated.
15 A true and correct copy of the January 12, 2015 letter is attached hereto as Exhibit D.

16 30. In its response, On Demand stated the following:

- 17 a. On Demand is not affiliated with As Seen On TV, Inc.;
- 18 b. No employee or anyone affiliated with On Demand attended the Toy &
19 Game Conference in Chicago on November 15-17, 2012;
- 20 c. No employee of or anyone affiliated with On Demand has ever met or
21 communicated with Ms. McCart-Pollak;
- 22 d. Kevin Harrington is not employed by or affiliated with On Demand; and
- 23 e. No employee of or anyone affiliated with On Demand ever communicated
24 with Mr. Harrington regarding Ms. McCart-Pollak’s Lots of Love Buddies.

25 31. Since that time, neither Ms. McCart-Pollak nor her counsel provided a response,
26 valid patent numbers, and/or documents to substantiate Ms. McCart-Pollak’s claims.

1 32. On August 3, 2015, approximately seven months after the undersigned counsel sent
2 the January 12, 2015 response, Ms. McCart-Pollak began a web and social media based smear
3 campaign falsely accusing On Demand of essentially stealing her Lots of Love Buddies idea.

4 33. For example, on her website <http://www.lotsoflovebuddies.com>, Defendant
5 purports to own intellectual property rights in her Lots of Love Buddies idea, posting misleading
6 statements alleging she has “Full U.S. and International Patent pending. (Please note this is not a
7 provisional patent...this is a full patent).”

8 34. This statement is false and/or misleading and implies that Defendant has patent
9 rights in her Lots of Love Buddies idea and that On Demand is somehow infringing those rights.

10 35. Defendant has not provided any patent numbers to support these statements and
11 On Demand has conducted a search which has revealed no patent applications or issued patents in
12 Ms. McCart-Pollak’s name and/or having the title “Lots of Love Buddies.”

13 36. Further, according to the USPTO database, Ms. McCart-Pollak’s U.S. Trademark
14 Application Serial Nos. 85546140 for LOTS OF LOVE BUDDIES and 85546155 for LOL
15 BUDDIES were both abandoned by the USPTO on December 11, 2012 because Ms. McCart-
16 Pollak failed to respond to Office Actions. A true and correct copy of the printouts from the
17 USPTO’s TSDR database for U.S. Trademark Application Serial Nos. 85546140 and 85546155
18 are attached hereto as Exhibit E and Exhibit F, respectively.

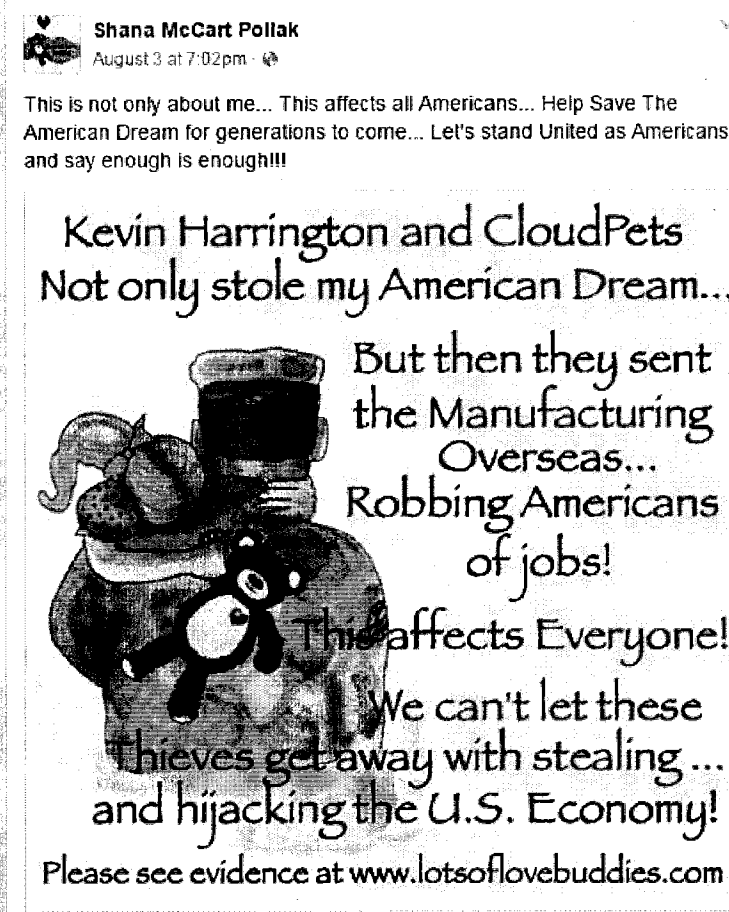
19 37. Additionally, as part of her smear campaign, Ms. McCart-Pollak revamped her
20 website, <http://www.lotsoflovebuddies.com>, to include countless repetitions of the claims made in
21 her Demand Letter that Mr. Harrington stole her Lots of Love Buddies product idea after receiving
22 her promotional materials on or about November 15-17, 2012.

23 38. From there, the Defendant attempts to connect Mr. Harrington with the CloudPets
24 product, asserting that Mr. Harrington stole Defendant’s idea and provided it to Spiral Toys, who
25 in turn used Defendant’s materials to create the CloudPets Product.

26 39. In furtherance of her smear campaign against On Demand, the CloudPets Mark,
27 and the CloudPets Product, Defendant also began a targeted assault on social media, blanketing
28 Facebook, Twitter, and Instagram with posts claiming that the idea was “stolen,” that she has

1 twelve hundred pages of evidence, along with providing a link to the alleged evidence at
2 Defendant's website, and a link to help fund a law suit on Gofundme.com
3 (www.gofundme.com/a2g8qym8c).

4 40. Representative samples of Defendant's posts include:



20 Figure 1; August 3 Facebook Post by Defendant



Figure 2; August 6 Facebook Post by Defendant



Shana McCart Pollak

August 6 at 10:57am · 🌐

Please keep Sharing... The wildfire is spreading!!!! People are listening!!!! No one deserves to have Their American Dream STOLEN by an original Shark on Shark Tank who was already worth hundreds and hundreds and hundreds and hundreds (okay you get my point) millions of dollars (his net worth in 2012 according to Forbes was 450 million dollars. When I pitched to him) BELIEVE ME THIS IS SPREADING... People are BECOMING AWARE!!! Please keep turning up the HEAT!!!! 💖💖💖

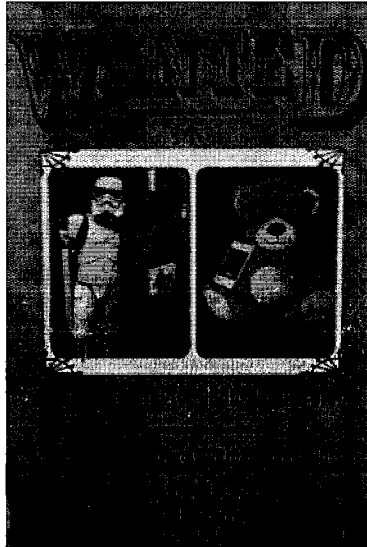


Figure 3; August 6 Facebook Post by Defendant



Shana McCart Pollak

August 7 at 6:17am · 🌐


I ❤️ This... This was what I woke up to in my Facebook feed this morning! WARRIORS let's give the WORLD something to talk about today! Let's make Kevin Harrington and CLOUDPETS regret that they stole The American Dream from a Mom of 3!!! www.lotsoflovebuddies.com THE TRUTH always WINS... Let's have the TRUTH echo the walls of Social Media today! So PLEASE continue to Like but more importantly hit that SHARE button!!! I ❤️ You WARRIORS!!!!




Paula White

Make it a point to make sure the enemy regrets ever messing with you! WIN FOR GOD! #Win

Figure 4; August 7 Facebook Post by Defendant

 **Lolbuddies** @ShanaLee1972 · Aug 6
 @gauravvarma #kevinharrington stole lotsoflovebuddies.com and sent it to #cloudpets maybe Gauri should contact Lotsoflovebuddies@yahoo.com

👍 1 ⭐ 1 ...


 **Lolbuddies** @ShanaLee1972 · Aug 6
 @TaraRRichter @TheAnthonyAmos @harringtonkevin u should probably come clean to your friends that u stole lotsoflovebuddies.com #Cloudpets

👍 1 ⭐ 1 ...


[View conversation](#)

 **Lolbuddies** @ShanaLee1972 · Aug 6
 #STOY investors do your due diligence you are going to LOSE everything go to lotsoflovebuddies.com 100 pgs of evidence!

👍 1 ⭐ 2 ...


 **Lolbuddies** @ShanaLee1972 · Aug 6
 #STOY are criminals... they stole #Cloudpets from lotsoflovebuddies.com 100 pages of evidence and her story!!!

👍 1 ⭐ 2 ...

 **Lolbuddies** @ShanaLee1972 · Aug 6
 @michelle__ann talking about liars #Cloudpets stole this from lotsoflovebuddies.com 100 pgs of evidence and her story PLEASE RT and SHARE

👍 1 ⭐ 1 ...

[View conversation](#)

 **Lolbuddies** @ShanaLee1972 · Aug 6
 @bsaevitzon1 ignoring the situation is only going to make everyone louder! #Cloudpets stole lotsoflovebuddies.com go to website evidence

👍 1 ⭐ 1 ...

[View conversation](#)

Figure 5; Selected Twitter Posts by Defendant



Figure 6; Selected Twitter Posts by Defendant's Niece

41. Despite attempts to remove the false, misleading, and disparaging statements from the CloudPets Product Facebook page and other social media site, Defendant smear campaign continued to escalate to the point of harassment, including posts not only to CloudPets Facebook page and its “community” of Facebook followers, but also with posts made directly to third party bloggers that were blogging about CloudPets.

42. The majority of these false, misleading and disparaging statements were directly made by Defendant and eight other individuals—who Defendant refers to as “warriors, each of whom appear to be related or otherwise associated with Defendant—that are also participating in Defendant's smear campaign across social media to disparage On Demand, the CloudPets Mark, and the CloudPets Product.

43. The false, misleading and disparaging statements made by Defendant and her “warriors,” all contain some variation of Defendant’s claim that the CloudPets Product was based off of and stolen from her Lots of Love Buddies idea, and supported by hundreds of pages of alleged “proof” that can be found at the LOL Buddies website.

1 44. In addition to these false, misleading and disparaging statements, Defendant also
2 inundated the pages of the forty or so bloggers that had posted product reviews of the CloudPets
3 Product, accusing the reviewers of promoting a “stolen” toy idea supported by hundreds of pages
4 of alleged “proof.”

5 **Harm Caused by Defendant’s False Advertising Campaign**

6 45. As a leading direct response marketing company, On Demand has developed a
7 substantial reputation and goodwill for itself generally as well as for the CloudPets Mark and
8 CloudPets Product specifically. Defendant’s false and/or misleading advertising campaign
9 damages On Demand and CloudPets reputation and goodwill and/or will cause and/or has caused
10 the loss of sales and sales opportunities.

11 46. Through a significant investment of time, money, and resources, On Demand and
12 its partners have developed a highly successful line of toys in the CloudPets Product.

13 47. The damage caused by the Defendant’s false and/or misleading advertising
14 campaign to the reputation and goodwill of On Demand, the CloudPets Mark, and the CloudPets
15 Product is likely to be substantial and irreparable, and will continue to grow unless the Defendant
16 is permanently enjoined from continuing her false and misleading campaign.

17 48. The Defendant’s false advertising campaign intentionally misleads, confuses, and
18 deceives consumers, through words and visual images, into believing that Defendant has
19 intellectual property rights in her Lots of Love Buddies idea and that On Demand has colluded
20 with Mr. Harrington to make use and profit from her idea. These false and/or misleading
21 statements will cause irreparable harm to On Demand if the Defendant is not permanently
22 enjoined.

23 49. If the Defendant is permitted to continue to publish such false, misleading and
24 disparaging statements regarding the CloudPets Mark and CloudPets Product, the reputational and
25 monetary damages to On Demand and its CloudPets Product will be substantial. The Defendant’s
26 false advertising campaign has and will continue to irreparably tarnish the goodwill and reputation
27 that On Demand has worked so hard to earn.

28 ///

52. As a direct and proximate result of Defendant's false, misleading and disparaging campaign, On Demand is suffering immediate and continuing irreparable injury for which there is no adequate remedy at law.

54. The foregoing acts have occurred in, or in a manner that has affected, interstate commerce.

55. On Demand incorporates by reference the allegations in each of the foregoing paragraphs as if fully set forth herein.

57. The false and misleading statements have deceived, and will continue to deceive, a substantial segment of On Demand's intended customers.

///

1 78. On information and belief, Ms. McCart-Pollak was aware of On Demand's existing
2 and prospective business relationships as described above.

3 79. On information and belief, Ms. McCart-Pollak has published the false, misleading
4 and/or disparaging statements with the intent to cause distributors and/or consumers of On
5 Demand's products to stop buying On Demand's products and/or terminate their business
6 relationships with On Demand.

7 80. By publishing the false, misleading and/or disparaging statements, Ms. McCart-
8 Pollak has interfered with On Demand's existing and prospective business relationships with
9 distributors and/or consumers of On Demand's unique products, including the CloudPets Product.

10 81. Ms. McCart-Pollak's interference with On Demand's existing and prospective
11 business relationships was improper in motive and means.

12 82. By reason of the foregoing, Ms. McCart-Pollak's improper actions have harmed
13 and threaten future harm to On Demand.

14 **COUNT V**
15 **DEFAMATION**

16 83. On Demand incorporates by reference the allegations in each of the foregoing
17 paragraphs as if fully set forth herein.

18 84. Ms. McCart-Pollak's statements, and the inferences logically drawn from them, are
19 false and misleading, and defame On Demand.

20 85. Upon information and belief, Ms. McCart-Pollak published the defamatory
21 statements and inferences knowing that they were false or with reckless disregard as to their
22 falsity, and distributed the false statements to one or more people.

23 86. By publishing the defamatory statements, Ms. McCart-Pollak is causing On
24 Demand to suffer damages, including but not limited to lost sales of On Demand's CloudPets
25 Product.

26 87. Ms. McCart-Pollak's defamatory statements and inferences have injured the
27 reputation of On Demand and threaten irreparable injury to the reputation of On Demand.

28 ///

COUNT VI

DECEPTIVE TRADE PRACTICES UNDER N.R.S. § 598.0915, *ET SEQ.*

88. On Demand incorporates by reference the allegations in each of the foregoing paragraphs as if fully set forth herein.

89. Ms. McCart-Pollak's acts as described above, constitute unfair and deceptive trade practices in violation of N.R.S. § 598.0915.

90. As a result of the unfair and deceptive conduct of Ms. McCart-Pollak, On Demand sustained damages including but not limited to damage to its reputation, damage to its relationships with existing and prospective customers, and lost business opportunities.

91. Ms. McCart-Pollak's wrongful conduct has been willful and intentional and will continue unless enjoined by the Court.

92. Because of Ms. McCart-Pollak's wrongful conduct, On Demand is suffering and will continue to suffer immediate and irreparable harm for which there is no adequate remedy at law unless Ms. McCart-Pollak is enjoined.

COUNT VII

**DECLARATORY JUDGMENT
(No Civil Conspiracy)**

93. On Demand incorporates by reference the allegations in each of the foregoing paragraphs as if fully set forth herein.

94. An actual controversy exists between Ms. McCart-Pollak and On Demand concerning Ms. McCart-Pollak's allegations that On Demand has colluded with Mr. Harrington and/or As Seen on TV, Inc. to make, use, and/or offer for sale Ms. McCart-Pollak's alleged intellectual property.

95. Upon information and belief, Ms. McCart-Pollak does not possess any intellectual property rights in her Lots of Love Buddies idea.

96. Upon information and belief, Ms. McCart-Pollak claims to have disclosed her Lots of Love Buddies idea to Mr. Harrington in or around November 2012 at a public trade show.

97. Prior to August 2015, On Demand, its employees and/or agents, have never met or communicated in any way with Mr. Harrington.

1 98. On Demand and its employees and/or agents, are in no way associated with or
2 affiliated with the company As Seen on TV, Inc.

3 99. Mr. Harrington never disclosed Ms. McCart-Pollak's Lots of Love Buddies idea to
4 On Demand or to any person or entity with whom On Demand has done business concerning its
5 CloudPets Product.

6 100. On Demand developed and introduced its CloudPets Product to the public prior to
7 Ms. McCart-Pollak's alleged communication with Mr. Harrington in or around November 2012.

8 101. Thus, On Demand did not assist, encourage, or plan with Mr. Harrington and/or As
9 Seen on TV, Inc. to make, use, and/or offer for sale Ms. McCart-Pollak's alleged intellectual
10 property.

11 102. On Demand has been injured by Ms. McCart-Pollak's allegations of civil
12 conspiracy, including, but not limited to, financial loss, and loss of goodwill and reputation.

13 103. Unless the relief requested by On Demand is granted, Ms. McCart-Pollak will
14 continue to assert these unsubstantiated allegations and disparage On Demand, the CloudPets
15 Mark, and the CloudPets Product.

16 **COUNT VIII**
17 **DECLARATORY JUDGMENT**
18 **(No Concert of Action)**

19 104. On Demand incorporates by reference the allegations in each of the foregoing
20 paragraphs as if fully set forth herein.

21 105. An actual controversy exists between Ms. McCart-Pollak and On Demand
22 concerning Ms. McCart-Pollak's allegations that On Demand has acted in concert with Mr.
23 Harrington and As Seen on TV, Inc. to make, use, and/or offer for sale Ms. McCart-Pollak's
24 alleged intellectual property.

25 106. Upon information and belief, Ms. McCart-Pollak does not possess any intellectual
26 property rights in her Lots of Love Buddies idea.

27 107. Upon information and belief, Ms. McCart-Pollak claims to have disclosed her Lots
28 of Love Buddies idea to Mr. Harrington in or around November 2012 at a public trade show.

1 108. Prior to August 2015, On Demand, its employees and/or agents, have never met or
2 communicated in any way with Mr. Harrington.

3 109. On Demand and its employees and/or agents, are in no way associated with or
4 affiliated with the company As Seen on TV, Inc.

5 110. Mr. Harrington never disclosed Ms. McCart-Pollak's Lots of Love Buddies idea to
6 On Demand or to any person or entity with whom On Demand has done business concerning the
7 CloudPets Product.

8 111. As stated above, On Demand developed and introduced its CloudPets Product to
9 the public prior to Ms. McCart-Pollak's alleged communication with Mr. Harrington in or around
10 November 2012.

11 112. Thus, On Demand did not assist, encourage, or plan with Mr. Harrington and/or As
12 Seen on TV, Inc. to make, use, and/or offer for sale Ms. McCart-Pollak's alleged intellectual
13 property.

14 113. On Demand has been injured by Ms. McCart-Pollak's allegations of civil
15 conspiracy, including, but not limited to financial loss, and loss of goodwill and reputation.

16 114. Unless the relief requested by On Demand is granted, Ms. McCart-Pollak will
17 continue to assert these unsubstantiated allegations and disparage On Demand, the CloudPets
18 Mark, and the CloudPets Product.

19 **COUNT IX**
20 **DECLARATORY JUDGMENT**
21 **(On Demand has not Committed Fraud)**

22 115. On Demand incorporates by reference the allegations in each of the foregoing
23 paragraphs as if fully set forth herein.

24 116. An actual controversy exists between Ms. McCart-Pollak and On Demand
25 concerning Ms. McCart-Pollak's allegations that On Demand committed fraud with Mr.
26 Harrington and As Seen on TV, Inc. to make, use, and/or offer for sale Ms. McCart-Pollak's
27 alleged intellectual property.
28

1 117. Upon information and belief, Ms. McCart-Pollak does not possess any intellectual
2 property rights in her Lots of Love Buddies idea.

3 118. Upon information and belief, Ms. McCart-Pollak claims to have disclosed her Lots
4 of Love Buddies idea to Mr. Harrington in or around November 2012 at a public trade show.

5 119. Prior to August 2015, On Demand, its employees and/or agents, have never met or
6 communicated in any way with Mr. Harrington.

7 120. On Demand and its employees and/or agents, are in no way associated with or
8 affiliated with the company As Seen on TV, Inc.

9 121. Mr. Harrington never disclosed Ms. McCart-Pollak's Lots of Love Buddies idea to
10 On Demand or to any person or entity with whom On Demand has done business concerning the
11 CloudPets Product.

12 122. As stated above, On Demand developed and introduced the CloudPets Product to
13 the public prior to Ms. McCart-Pollak's alleged communication with Mr. Harrington in or around
14 November 2012.

15 123. Thus, On Demand did not assist, encourage, or plan with Mr. Harrington and/or As
16 Seen on TV, Inc. to make, use, and/or offer for sale Ms. McCart-Pollak's alleged intellectual
17 property.

18 124. On Demand has been injured by Ms. McCart-Pollak's allegations of fraud,
19 including, but not limited to financial loss, and loss of goodwill and reputation.

20 125. Unless the relief requested by On Demand is granted, Ms. McCart-Pollak will
21 continue to assert these unsubstantiated allegations and disparage On Demand, the CloudPets
22 Mark, and the CloudPets Product.

23 **COUNT X**
24 **DECLARATORY JUDGMENT**
 (No Misappropriation of Trade Secrets)

25 126. On Demand incorporates by reference the allegations in each of the foregoing
26 paragraphs as if fully set forth herein.
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1 127. An actual controversy exists between Ms. McCart-Pollak and On Demand
2 concerning Ms. McCart-Pollak's allegations that On Demand misappropriated her alleged trade
3 secrets involving her Lots of Love Buddies idea.

4 128. Upon information and belief, Ms. McCart-Pollak does not possess a valuable trade
5 secret or any intellectual property rights in her Lots of Love Buddies idea.

6 129. Upon information and belief, Ms. McCart-Pollak claims to have disclosed her Lots
7 of Love Buddies idea to Mr. Harrington in or around November 2012 at a public trade show.

8 130. Prior to August 2015, On Demand, its employees and/or agents, have never met or
9 communicated in any way with Mr. Harrington.

10 131. On Demand and its employees and/or agents, are in no way associated with or
11 affiliated with the company As Seen on TV, Inc.

12 132. Mr. Harrington never disclosed Ms. McCart-Pollak's Lots of Love Buddies idea to
13 On Demand or to any person or entity with whom On Demand has done business concerning its
14 CloudPets Product.

15 133. As stated above, On Demand developed and introduced the CloudPets Product to
16 the public prior to Ms. McCart-Pollak's alleged communication with Mr. Harrington in or around
17 November 2012.

18 134. Thus, On Demand did not misappropriate Ms. Pollack's alleged trade secret to
19 make, use, and/or offer for sale Ms. McCart-Pollak's alleged intellectual property.

20 135. On Demand has been injured by Ms. McCart-Pollak's allegations of trade secret
21 misappropriation, including, but not limited to financial loss, and loss of goodwill and reputation.

22 136. Unless the relief requested by On Demand is granted, Ms. McCart-Pollak will
23 continue to assert these unsubstantiated allegations and disparage On Demand, the CloudPets
24 Mark, and the CloudPets Product.

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COUNT XI
DECLARATORY JUDGMENT

(On Demand has not been Unjustly Enriched)

137. On Demand incorporates by reference the allegations in each of the foregoing paragraphs as if fully set forth herein.

138. An actual controversy exists between Ms. McCart-Pollak and On Demand concerning Ms. McCart-Pollak's allegation that On Demand has benefited off the sales of the CloudPets Product to Ms. McCart-Pollak's detriment.

139. Upon information and belief, Ms. McCart-Pollak does not possess any intellectual property rights in her Lots of Love Buddies idea.

140. Upon information and belief, Ms. McCart-Pollak claims to have disclosed her Lots of Love Buddies idea to Mr. Harrington in or around November 2012 at a public trade show.

141. Prior to August 2015,, On Demand, its employees and/or agents, have never met or communicated in any way with Mr. Harrington.

142. On Demand and its employees and/or agents, are in no way associated with or affiliated with the company As Seen on TV, Inc.

143. Mr. Harrington never disclosed Ms. McCart-Pollak's Lots of Love Buddies idea to On Demand or to any person or entity with whom On Demand has done business concerning the CloudPets Product.

144. As stated above, On Demand developed and introduced the CloudPets Product to the public prior to Ms. McCart-Pollak's alleged communication with Mr. Harrington in or around November 2012.

145. Thus, On Demand did not assist, encourage, or plan with Mr. Harrington and/or As Seen on TV, Inc. to make, use, and/or offer for sale Ms. McCart-Pollak's alleged intellectual property.

146. On Demand has been injured by Ms. McCart-Pollak's allegations of unjust enrichment, including, but not limited to financial loss, and loss of goodwill and reputation.

REQUEST FOR RELIEF

WHEREFORE, On Demand respectfully requests that this Court:

- 1 A. Enter judgment against the Ms. McCart-Pollak on all counts of the Complaint;
- 2 B. Grant preliminary and permanent injunctive relief:
 - 3 i. Enjoining Ms. McCart-Pollak and those acting in concert with her or under her
 - 4 direction or control from publishing further false, misleading, disparaging,
 - 5 and/or defamatory statements about On Demand, the CloudPets Mark, the
 - 6 CloudPets Product or that Spiral Toys, On Demand, Jay Franco & Sons, Inc.
 - 7 d/b/a Jay At Play, and/or Kevin Harrington stole Defendant's Lots of Love
 - 8 Buddies idea or product.
 - 9 ii. Requiring Ms. McCart-Pollak to retract, recall and destroy all electronic and
 - 10 paper copies of the false, disparaging, and/or defamatory statements.
 - 11 iii. Requiring Ms. McCart-Pollak to issue an explicit retraction, correction and
 - 12 apology for the false, misleading, disparaging, and/or defamatory statements
 - 13 and to ensure that the retraction, correction and apology are distributed to the
 - 14 same extent as the false, misleading, disparaging, and/or defamatory statements.
 - 15 iv. Requiring Ms. McCart-Pollak to report to the Court and to On Demand the
 - 16 steps they have taken to comply with such injunction within fourteen (14) days
 - 17 of the issuance thereof.
- 18 C. Declare that On Demand did not commit civil conspiracy or act in concert with Mr.
- 19 Harrington and/or As Seen on TV, Inc. to make, use, and/or offer for sale Ms. McCart-Pollak's
- 20 alleged intellectual property;
- 21 D. Declare that On Demand did not commit fraud;
- 22 E. Declare that Ms. McCart-Pollak does not have a valid trade secret in her Lots of
- 23 Love Buddies idea;
- 24 F. Declare that On Demand has not been unjustly enriched;
- 25 G. Award On Demand damages in an amount to be determined at trial;
- 26 H. Award On Demand enhanced damages as permitted by law;
- 27 I. Award On Demand its reasonable attorneys' fees and the costs of this action; and
- 28 J. Grant such other relief as the Court deems just and proper.

JURY DEMAND

On Demand demands a jury trial on all issues triable by jury.

DATED this 17th day of August, 2015.

**HOLLEY DRIGGS WALCH
FINE WRAY PUZEY & THOMPSON**

/s/ James D. Boyle

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